Supreme Court, U.S.
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OCTOBER TERM 2014

No. 15-5040

IN THE SUPREME COURT OF THE UNITED STATES

TERRANCE WILLIAMS,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

CAPITAL CASE

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Dated: August 7, 2015

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Petitioner, Terrance Williams, files this reply brief in support of his Petition for Writ of Certiorari, and prays that the Court issue its writ of certiorari to review the denial of Petitioner's motion to recuse then-Chief Justice Ronald Castille of the Pennsylvania Supreme Court, and the subsequent judgment of that court reversing the lower court's grant of sentencing relief based upon the Commonwealth's violations of *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny.[1]

ARGUMENT

This case squarely presents a question that, as the Commonwealth does not and cannot dispute, has divided federal circuit courts and state courts, and now begs for resolution—does the bias of one tribunal member impermissibly taint the judgment of the whole tribunal regardless of whether the biased member cast the deciding vote? Petitioner's case is an ideal vehicle for this question because Chief Justice Castille, as the Philadelphia District Attorney, made the final decision to seek death against Petitioner, and then, as the Chief Justice, reviewed a ruling that his office (while he was District Attorney) committed prosecutorial misconduct at the capital sentencing proceeding by failing to disclose favorable evidence to the defense. Although Chief Justice Castille did not cast the deciding vote in reversing the lower court's ruling, his associate justices could not reasonably be expected to rule that their Chief Justice's office had committed misconduct, and the tribunal's deliberations had, at a minimum, the appearance of impropriety.

This question—whether the participation of a biased judge in the adjudicatory process so taints the fairness, or the appearance of fairness, of appellate review as to violate due process—

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[1] All emphasis herein is supplied unless otherwise indicated. Relevant state court decisions were included in the Appendix filed with the Petition for Writ of Certiorari and are cited herein as "A-" followed by the page number. A Supplemental Appendix containing Petitioner's motion to recuse Chief Justice Castille is cited as "SA-" followed by the page number and is included with this brief.

has split the courts below. Its resolution is important not only to the litigants in this case, but to the public at large, who have a vested interest in insuring that the decisions within the justice system, and particularly the decision to affirm a sentence of death, are made by tribunals that are free from the taint of bias.

In opposing the petition, the Commonwealth argues that this issue is "unpreserved and purely abstract." Respondent's Brief in Opposition (BIO) at 13. Neither argument is accurate. The question is anything but abstract: it is integral to the recusal request.

Citing Petitioner's failure to explicitly discuss, in his recusal motion, the impact that Chief Justice Castille's participation would have on his colleagues, the Commonwealth asserts that Petitioner has not preserved this issue. BIO at 14. But this argument would make sense only if Petitioner's motion for recusal were read as seeking Chief Justice Castille's recusal only *in the event that* he cast the deciding vote, which it did not. Petitioner sought the recusal of Chief Justice Castille because he was a member of the multi-member tribunal that would be adjudicating the appeal, and Petitioner explicitly argued that the Chief Justice's participation in the case would cause bias or, at a minimum, the appearance of bias. SA-1-2, 9.

Moreover, Petitioner requested that the recusal motion be referred to and decided by the full court in the event that Chief Justice Castille declined to recuse himself. SA-14-16. Chief Justice Castille denied this request too. Contrary to the Commonwealth's argument, Petitioner's recusal motion necessarily included the question whether the bias of one tainted the opinion of all.

Furthermore, this question developed into a distinct issue only when Justice Castille participated in the adjudication of Petitioner's case *after* denying Petitioner's requests.

As this Court has explained when discussing its jurisdiction:

> If the question [is] only an enlargement of the one mentioned in the assignment of errors [presented in state court], or if it [is] so connected with it in substance as to form but another ground or reason for alleging the invalidity of the personal judgment, we should have no hesitation in holding the assignment sufficient to permit the question to be now raised and argued.

Dewey v. City of Des Moines, 173 U.S. 193, 197-98 (1899); *see also Yee v. City of Escondido*, 503 U.S. 519, 534-35 (1992) (a litigant seeking review in this Court "generally possesses the ability to frame the question to be decided in any way he chooses, without being limited to the manner in which the question was framed below"). If an issue is "necessarily connected" to the claim presented to the state courts—in other words if the question cannot avoid "touching the question" included in the presentation of error to the state court—this Court properly exercises jurisdiction over the question presented. *See Dewey*, 173 U.S. at 198. The issue of whether Chief Justice Castille's participation in the tribunal's adjudication of Petitioner's appeal violated due process and the Eighth Amendment is "necessarily connected" to the issue of whether Chief Justice Castille's failure to recuse himself itself violated due process and the Eighth Amendment.

The Commonwealth also argues that due process did not require Chief Justice Castille's recusal. BIO at 9. To the contrary, this is a textbook example of judicial bias. If ever there was a case that "offer[s] a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused," *Caperton v. Massey Coal Co.*, 556 U.S. 868, 878 (2009), this is it.

The Commonwealth cites the practices of this Court's own members in an attempt to justify Chief Justice Castille's decision not to recuse himself. BIO at 10. However, those practices actually support Petitioner's position. In *Laird v. Tatum*, 409 U.S. 824 (1972), then-Justice William H. Rehnquist agreed that a former Justice Department official should be

disqualified if he signed a pleading or brief or actively participated in any case. *Id.* at 828. Citing one of his prior recusals, Justice Rehnquist noted that in *S & E Contractors, Inc. v. United States*, 406 U.S. 1 (1972), a case "in which I had only an *advisory role* which terminated immediately *prior to* the commencement of the litigation, I disqualified myself."[2] *Laird*, 409 U.S. at 829. Justice Rehnquist did not recuse himself in *Laird* only because he had "never participated, either of record or in any advisory capacity . . . in the government's conduct of the case." *Id.* at 828. Likewise, in *Schneiderman v. United States*, 320 U.S. 118 (1943), Justice William F. Murphy did not recuse himself from a case where the basis for recusal was the fact that the case was brought and tried while he was Attorney General. *See Laird*, 409 U.S. at 830. Of these examples,[3] *S & E Contractors*, where recusal was found to be warranted, is the only case in which the sitting justice had any role in the case while working for the Justice Department.

Further, the Commonwealth's comparison of the Philadelphia District Attorney's Office to the Department of Justice, BIO at 11, is inapt. As noted in *Laird*, the recusal issue with respect to former Justice Department officials, particularly Attorneys General, is "special" because the Department of Justice "is the largest law office in the world and has cases by the hundreds of thousands and lawyers by the thousands. For the most part, the relationship of the Attorney General to most of those matters is purely formal." 409 U.S. at 829 (internal quotations

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[2] Justice Rehnquist was never the Attorney General. *See, e.g., Laird*, 409 U.S. at 825-27.

[3] The Commonwealth also cites Chief Justice John Marshall's authoring of *Marbury v. Madison*, 5 U.S. 137 (1803), despite his prior involvement in the case as Secretary of State. Petitioner finds no record of either party in *Marbury* requesting Chief Justice Marshall recuse himself and notes that the Chief Justice's prior involvement was not part of the "accusatory process." *See In re Murchison*, 349 U.S. 133, 137 (1955).

and citations omitted). The comparison is particularly ill-suited in this case, where the District Attorney personally authorized his office to pursue the death penalty.

The Commonwealth also compares Petitioner's case to a list of purportedly "identical recusal requests," BIO at 10, which Chief Justice Castille previously denied. However, it fails to note the obvious controlling distinctions. In denying the other recusal motions, Chief Justice Castille relied on the fact that he was *not* the District Attorney during the defendants' trials, had *no* personal involvement or participation in the matters, and had *not* prejudged the cases in any way. *See Commonwealth v. Beasley*, 937 A.2d 379, 381 (Pa. 2007) (opinion denying recusal); *Commonwealth v. Rainey*, 912 A.2d 755, 757-58 (Pa. 2006) (opinion denying recusal) ("I was not personally involved in . . . the charging decisions that were made in [t]his case . . . ."); *Commonwealth v. Abu-Jamal*, 720 A.2d 121, 122-23 (Pa. 1998) (opinion denying recusal) ("I personally neither contributed to, nor participated in, the prosecution of appellant's case[4] . . . . I was not privy to any special information that could possible hamper my ability to fairly and impartially decide this appeal. . . . I have not prejudged appellant's matter . . . ."); *Commonwealth v. Jones*, 663 A.2d 142, 143-45 (Pa. 1995) (opinion denying recusal).

The Commonwealth also cites Chief Justice Castille's claim that his "formal approval of [capital charging] recommendations" was simply a "concurrence in [his assistants'] judgment that the death penalty statute applied, *i.e.*, that one or more of the statutory aggravating circumstances . . . existed, and nothing more." BIO at 11-12 n.6 (first alteration in original) (internal quotations and citations omitted). Chief Justice Castille has stated: "My concurrence in

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[4] Chief Justice Castille noted that it was then-mayor of Philadelphia, Edward Rendell, who was the District Attorney at the time of Mr. Abu-Jamal's trial and who approved the Commonwealth's pursuit of the death penalty against Mr. Abu-Jamal. *Abu-Jamal*, 720 A.2d at 122 n.1.

the judgment of my assistants that notice should be provided to a murder defendant of potential aggravating circumstances is not . . . a level of involvement" that requires recusal. *Rainey*, 912 A.2d at 758.

Chief Justice Castille's description of the grave decision to seek the death penalty as a mere ministerial act is entirely unpersuasive. Whether there is sufficient evidence to support an aggravating factor does not, ipso facto, determine whether a death sentence is sought. The Commonwealth does not assert that it was Chief Justice Castille's policy as District Attorney to capitally charge every case in which there was evidence to support at least one aggravating factor. Rather, the decision to seek death is a most serious exercise of discretion. *See Wayte v. United States*, 470 U.S. 598, 607-08 (1985).

In any event, the record in this case does not reflect a mere concurrence in providing notice of potential aggravating circumstances. Rather, the trial prosecutor sent a memorandum to her superiors requesting that she be authorized to seek the death penalty. The prosecutor's memorandum described the facts of the crime, the aggravating circumstances, and the mitigating circumstances. A-110-11. In personally approving her request to seek death, then-District Attorney Castille participated directly and significantly in the prosecution of this case. If the decision to seek death in a particular case is not part of the "accusatory process," *see In re Murchison*, 349 U.S. at 137, it is unclear what would be.

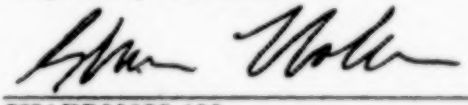
The Commonwealth dismisses Petitioner's case as unworthy of this Court's attention on the ground that it is fact-bound and non-recurring in light of Chief Justice Castille's retirement from the court and the lapse in time since his service as District Attorney. BIO at 12-13. In fact, cases where an appellate judge was previously involved in the case as a prosecutor are quite likely to recur, as are cases challenging one tribunal member's bias and its impact on the court as

a whole. This latter issue will arise any time that a recusal motion is filed with respect to one judge on a multi-member appellate tribunal.

CONCLUSION

This Court should issue its writ of certiorari to resolve the uncontested split among lower courts and to review the decisions of Chief Justice Castille and the Pennsylvania Supreme Court.

Respectfully submitted,



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Counsel for Petitioner

Dated: August 7, 2015

No. 15-5040

IN THE SUPREME COURT OF THE UNITED STATES

TERRANCE WILLIAMS,

Petitioner,

v.

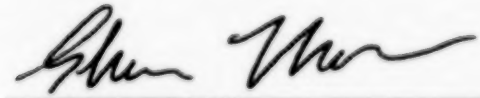
COMMONWEALTH OF PENNSYLVANIA,

Respondent.

PROOF OF SERVICE

I, Shawn Nolan, certify that on this 7th day of August, 2015, I caused a copy of the foregoing *Reply in Support of Petition for Writ of Certiorari* to be served by FIRST CLASS MAIL, postage prepaid, upon all parties required to be served under SUP. CT. R. 29, listed below:

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August 7, 2015

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United States Supreme Court
One First Street, N.E.
Washington, D.C. 20543

Re: No. 15-5040, *Terrance Williams v. Pennsylvania* (Capital Case)

Dear Mr. Harris:

Enclosed please find an original and ten copies of Mr. Williams's Reply in Support of Petition for Writ of Certiorari and accompanying Supplemental Appendix. I have also included an additional copy of both and would appreciate your date stamping and returning them to me in the enclosed self-addressed, stamped envelope.

Thank you for your consideration in this matter.

Sincerely,

Shawn Nolan
Chief, Capital Habeas Unit

Enclosures
Cc: Ronald Eisenberg, Esq.

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OCTOBER TERM 2014

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IN THE SUPREME COURT OF THE UNITED STATES

TERRANCE WILLIAMS,

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v.

COMMONWEALTH OF PENNSYLVANIA,

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On Petition for Writ of Certiorari to the
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CAPITAL CASE

SUPPLEMENTAL APPENDIX TO REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Motion to Recuse Chief Justice Castille (and accompanying exhibits), Oct. 1, 2012 ..... SA-1

IN THE SUPREME COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
Petitioner,	:	No. 163 EM 2012
v.	:	
TERRANCE WILLIAMS,	:	
Respondent.	:	

RESPONDENT'S MOTION TO RECUSE CHIEF JUSTICE CASTILLE

Respondent Terrance Williams, through counsel, respectfully moves for recusal of Chief Justice Ronald D. Castille from the instant proceedings. In support of this motion, Mr. Williams states as follows:[1]

1. Chief Justice Castille was the District Attorney for Philadelphia from January 1, 1986 until March 12, 1991.

2. Chief Justice Castille *personally authorized his Office to seek the death penalty in this case*, hand-writing the following on a memorandum to Mark Gottlieb, Chief of his Office's Homicide Unit, which was introduced as an exhibit during the recent PCRA evidentiary hearing:

> Mark,
> Approved to proceed on the Death Penalty.
> /s/ Ronald D. Castille

PCRA Evidentiary Hearing Exhibit P-1, Memorandum to Mark Gottlieb, Chief, Homicide Unit, page 2 (dated 1/21/86) (appended as exhibit A); see also NT 9/20/12 (a.m.) at 11 (trial prosecutor Andrea Foulkes identifies Chief Justice Castille's signature on this document as authorizing the approval to proceed on the death penalty).

[1] All emphasis herein is supplied unless otherwise indicated.

3. Chief Justice Castille was the District Attorney throughout the trial, capital sentencing, post-trial, and direct appeal proceedings in this case.

4. On direct appeal in Mr. Williams' case, the Philadelphia District Attorney's Office filed a Brief in the Pennsylvania Supreme Court, asking the Court to affirm Mr. Williams' convictions and death sentence. Then-District Attorney Castille is identified as one of the listed counsel for the Commonwealth on the cover and signature page of the Brief (appended as exhibit B).

5. In the current PCRA proceedings, evidence was introduced that, on June 23, 1988, trial prosecutor Foulkes wrote a letter to the Pennsylvania Board of Probation and Parole on behalf of Marc Draper, a key Commonwealth witness at Mr. Williams' trial. See PCRA Evidentiary Hearing Exhibit P-15 (appended as exhibit C). The letter asks the Board to "consider [Mr. Draper's] cooperation ... when determining his eligibility for parole or commutation," and notes that this recommendation from the prosecutor was a "benefit or promise conveyed to" Mr. Draper in exchange for his testimony against Mr. Williams. Id. at 2. The trial prosecutor testified at the recent PCRA hearing that this promise to the Commonwealth's witness was not disclosed to the defense at trial. In her PCRA ruling, Court of Common Pleas Judge Sarmina cited this undisclosed inducement, among several other items of evidence, as evidence demonstrating that the trial prosecutor suppressed exculpatory evidence, played "fast and loose" with the truth, "had no problem disregarding her ethical obligations," and "took unfair measures to win." NT 9/28/12 at 37, 39 45. Although Chief Justice Castille is not the signatory of the letter, the letter is written on the official letterhead of the Philadelphia District Attorney's Office and the sole name on the letterhead is "Ronald D. Castille, District Attorney." If for no other reason than the appearance of impropriety, Respondent respectfully suggests that recusal is appropriate for this reason as well.

6. In 1993, Chief Justice Castille campaigned for a position as a Justice on the

Pennsylvania Supreme Court. His election campaign stressed his record as Philadelphia's District Attorney and, in particular, emphasized then-District Attorney Castille's pursuit of capital punishment and that, as District Attorney, he "put 45 people on death row," one of whom is Terrance Williams, Respondent on the pending Commonwealth motion to vacate the stay of execution. Examples include:

* "Castille had campaigned as the law-and-order candidate, airing television commercials portraying [his opponent] as being soft on crime." Lisa Brennan, "Republicans Win Court Seats," LEGAL INTELLIGENCER (Nov. 4, 1993) (available on Westlaw, 11/4/1993 TLI 1);

* "Castille, a former Philadelphia district attorney, had campaigned as the self-proclaimed law-and-order candidate, airing television commercials portraying his Democratic opponent as soft on crime." Associated Press, "Castille Wins Top Court Seat," ALLENTOWN MORNING CALL (Nov. 3, 1993) (available on Westlaw, 1993 WLNR 1864290);

* "Castille ... campaigned as the tough-as-nails scourge of criminals .... Castille's career as Philadelphia's district attorney, where he built a reputation as a law-and-order crime buster, thrust him in the public eye." Katharine Seelye, "Castille Defeats Nigro for Seat on Supreme Court," PHILADELPHIA INQUIRER (Nov. 3, 1993) (available on Westlaw, 1993 WLNR 1995447);

* "Castille [ran] a law-and-order campaign, touting his 45 death-penalty convictions and saying [his opponent] was soft on crime. ... 'My campaign was basically that I've spent 20 years in law enforcement as a prosecutor, and the citizens want somebody who's tough on crime. My record's been just that,' Castille said early this morning." Tim Reeves, "Castille Leads GOP Sweep of Courts," PITTSBURGH POST-GAZETTE (Nov. 3, 1993) (available on Westlaw, 1993 WLNR 2163040);

* "[W]hen he is asked why he wants to serve on the Supreme Court, what qualifies him, why voters should support him, he starts with his experience in Vietnam, works up to his record as Philadelphia district attorney and caps his pitch by declaring that he put 45 murderers on death row. Because he served in combat and as a prosecutor, he says, he is a proven law-and-order guy, tough on crime, eats nails for breakfast." "Castille used his first television ads to attack [his opponent], saying [his opponent] was lenient on drug dealers. ... Castille's TV spots conclude: 'If you are looking for a law-and-order guy – Ron Castille. He put 45 murderers on death row and has been endorsed by the over 36,000 professional police officers in Pennsylvania.'" Katharine Seelye, "Castille Emphasizes Law-and-Order Image," PHILADELPHIA

INQUIRER (Oct. 21, 1993) (available on Westlaw, 1993 WLNR 1992136);

* "Castille ... hopes a law-and-order message, coupled with name recognition in southeastern Pennsylvania, will help him win .... 'When I start talking about court reform, people's eyes glaze over,' he said. 'When I tell them about (my) sending criminals to death row or how I fought the Mafia in Philadelphia, then they're interested.'" Frank Reeves, "Castille Preaches Law-and-Order Message to Voters, PITTSBURGH POST-GAZETTE (Oct. 18, 1993) (available on Westlaw, 1993 WLNR 2134084);

* "Castille and his prosecutors sent 45 people to death row during their tenure, accounting for more than a quarter of the state's death row population. Castille wears the statistic as a badge. And he is running for the high court as if it were exclusively the state's chief criminal court rather than a forum for a broad range of legal issues. ... Castille talks about bringing a prosecutor's perspective to the bench." Tim Reeves, "High Court Hopefuls Pressing for Change," PITTSBURGH POST-GAZETTE (Oct. 17, 1993) (available on Westlaw, 1993 WLNR 2117584);

* "Castille's [TV] ad portrays [his opponent] as soft on crime and offers Castille, a former Philadelphia district attorney, as the 'law-and-order' alternative. ... The ad ... says Castille has put 45 people on death row and has received the endorsement of more than 36,000 police officers in the state." "Nigro, Castille Begin TV Campaign," LEGAL INTELLIGENCER (Oct. 14, 1993) (available on Westlaw, 10/14/1993 TLI 3); Katharine Seelye, "Judicial Candidates Begin Courting the TV Audience," PHILADELPHIA INQUIRER (Oct. 12, 1993) (available on Westlaw, 1993 WLNR 1991534) (same);

* "Some candidates ... skated perilously close to saying how they might be expected to rule on issues that could come before them as judge. Take, for example, Supreme Court Justice-elect Ron Castille – who, while pursuing a job requiring him to hear death-penalty appeals, bragged that he sent 45 people to death row when he was a prosecutor." Lynn Marks & Ellen Kaplan, "Disorder in the Courts," PITTSBURGH POST-GAZETTE (Nov. 14, 1993) (available on Westlaw, 1993 WLNR 2150772);

* Candidates "Castille, Nigro and Surrick are aware that special interest groups capable of giving money to control votes would love to hear their positions on gun control, abortion, the death penalty or any hot issue of the day. Under the current [legal] restrictions, Castille says if candidates take positions then they'll have to recuse themselves from any decisions in those cases. 'There's really no solution to it,' Castille says. 'You ask people to vote for you, they want to know where you stand on the death penalty. *I can certainly say I sent 45 people to death row as District Attorney of Philadelphia. They sort of get the hint.*'" Lisa Brennan, "State Voters Must Choose Next Supreme Court Member," LEGAL INTELLIGENCER (Oct. 28, 1993)

(available on Westlaw, 10/28/1993 TLI 1).

7. Chief Justice Castille was elected and assumed his position on the Pennsylvania Supreme Court in January 1994.

8. Since Chief Justice Castille assumed the Bench, undersigned counsel's office has sought Chief Justice Castille's recusal from several Philadelphia capital PCRA appeals, arguing that recusal was appropriate because of Chief Justice Castille's role as Philadelphia's District Attorney during some earlier stage of the case. Chief Justice Castille denied recusal in those cases. See, e.g., Commonwealth v. Porter, 35 A.3d 4, 29 (Pa. 2012) (recusal opinion of Castille, C.J.); Commonwealth v. Beasley, 937 A.2d 379 (Pa. 2007) (recusal opinion of Castille, J.); Commonwealth v. Rainey, 912 A.2d 755 (Pa. 2006) (recusal opinion of Castille, J.); Commonwealth v. Jones, 663 A.2d 142 (Pa. 1995) (recusal opinion of Castille, J.); Commonwealth v. Williams, 732 A.2d 1167, 1174 (Pa. 1999).

9. Chief Justice Castille's most recent opinions denying recusal motions based in part on his earlier role as District Attorney suggest and/or expressly state that undersigned counsel's office is acting in bad faith by seeking Chief Justice Castille's recusal. See, e.g., Rainey, 912 A.2d at 759 (accusing counsel of "reckless disregard" and writing "scurrilously"); id. at 760 (stating that counsel's "unsupported 'factual' averments are utterly false ..."); id. at 760 n.3 ("It bears noting, given the nature of the instant allegations, that the attorney's oath of office includes a pledge to 'use no falsehood.' ... In addition, the Rules of Professional Conduct prohibit lawyers from knowingly making a false statement of material fact or law to a tribunal...."); id. at 761 ("I certainly hope that the Chief Defender did not personally review and approve as a 'policy' matter the falsehoods that are the basis for [counsel's] argument contained herein."); id. at 761 (stating that counsel's "allegations are as bereft of factual support as they are distressingly unmindful of his sworn duties as a lawyer and officer of this Court"); id. at 761 ("reckless nature of [counsel's] baseless

allegation"); Beasley, 937 A.2d at 381 (accusing counsel of "false statements," "mischaracterizations" and "ethical lapses"); id. at 382 (asserting that counsel made "scandalous misrepresentations in Rainey"); id. at 382 (asserting that counsel's actions in Rainey were "unethical representation"); id. at 383 (suggesting that counsel "betray[ed] contempt for ethical standards" and "contempt for [the] court"); id. at 383 (asserting that counsel is in "dogged pursuit of a poor reputation"); Porter, 35 A.3d at 33 (rejecting counsel's "repetitious complaint that my former position as the elected District Attorney of Philadelphia County requires my recusal" for reasons stated in "multiple prior opinions" (citing Beasley)); id. at 34 (asserting that counsel's requests for Chief Justice Castille's recusal reflect counsel's "perverse worldview"); id. at 34 (suggesting that counsel's recusal motions violate "professional ethical obligations").

ARGUMENT

10. Chief Justice Castille's recusal from this matter is appropriate under Pennsylvania law, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the Eighth Amendment to the United States Constitution.

11. Moreover, should Chief Justice Castille decline to recuse himself, the Due Process Clause and the Eighth Amendment require that the recusal issue be considered and decided by the full Court.

I. DUE PROCESS AND THE EIGHTH AMENDMENT REQUIRE CHIEF JUSTICE CASTILLE'S RECUSAL

12. "The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980); accord In re Murchison, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process."). This due process right "has been jealously guarded by [the United States Supreme] Court" because it "preserves both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done." Marshall, 446 U.S. at 242 (citation

and internal quotation marks omitted). And this due process requirement takes on even greater significance in a capital case, because of the Eighth Amendment's heightened due process requirements. E.g., Lockett v. Ohio, 438 U.S. 586, 604 (1978); Woodson v. North Carolina, 428 U.S. 280, 305 (1976).

13. A fair, "impartial and disinterested tribunal," as required by the Eighth and Fourteenth Amendments, requires not just "an absence of actual bias" – there must not be "even the probability of unfairness," and "'justice must satisfy the appearance of justice.'" In re Murchison, 349 U.S. at 136 (quoting Offutt v. United States, 348 U.S. 11, 14 (1954)). As the United States Supreme Court most recently stated in Caperton v. Massey Coal Co., 556 U.S. 868 (2009): "Under our precedents there are *objective standards* that require recusal when 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" Id. at 872 (quoting Withrow v. Larkin, 421 U.S. 35, 47 (1975)). The Supreme Court further explained:

> The difficulties of inquiring into actual bias, and the fact that the inquiry is often a private one, simply underscore the need for objective rules. Otherwise there may be no adequate protection against a judge who simply misreads or misapprehends the real motives at work in deciding the case. The judge's own inquiry into actual bias, then, is not one that the law can easily superintend or review, though actual bias, if disclosed, no doubt would be grounds for appropriate relief. In lieu of exclusive reliance on that personal inquiry, or on appellate review of the judge's determination respecting actual bias, the Due Process Clause has been implemented by objective standards that do not require proof of actual bias.

Caperton, 556 U.S. at 883.

14. These "objective standards" require recusal when the situation "offer[s] a possible temptation to the average man as a judge ... not to hold the balance nice, clear and true between the State and the accused." Caperton, 556 U.S. at 878 (quoting Tumey v. Ohio, 273 U.S. 510, 532 (1927)); id. at 879 (same).

15. While the "possible temptation" standard "cannot be defined with precision," Murchison, 349 U.S. at 136; Caperton, 556 U.S. at 879, it applies here, where Chief Justice Castille

was the District Attorney responsible for prosecuting Mr. Williams at trial and on direct appeal; where Chief Justice Castille in a handwritten note *personally authorized* his Office to seek the death penalty for Mr. Williams; where Chief Justice Castille's name appears as counsel for the Commonwealth on the direct appeal brief seeking affirmance of Mr. Williams' convictions and death sentence; where the claims presented in this case include claims that the District Attorney's Office, then headed by Chief Justice Castille, violated due process under Brady and related cases by suppressing exculpatory information and presenting false and misleading information to the jury; where Chief Justice Castille's name appears as counsel for the Commonwealth on a letter that is part the evidence litigated in the Court of Common Pleas in this case; where Chief Justice Castille's campaign for judicial office highlighted his obtaining the death penalty in a number of capital cases, including Mr. Williams' case; and where Chief Justice Castille appears to have expressed hostility to undersigned counsel's office.

16. Respondent respectfully submits that, considering "all the circumstances of this case, due process requires recusal." Caperton, 556 U.S. at 872. Moreover, consideration of some of the circumstances individually highlights why due process requires Chief Justice Castille's recusal.

17. The Supreme Court's finding of a due process violation in Murchison supports Respondent's argument that due process does not allow Chief Justice Castille's participation as a judge in a case where he was the District Attorney who was responsible for Mr. Williams' prosecution throughout trial and direct appeal, and personally authorized his Office to seek the death penalty.

18. In Murchison, the judge who presided at trial had conducted "'one man grand jury' proceedings" that resulted in the defendant's indictment. 349 U.S. at 136. The Supreme Court held:

> Having been a part of that process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused. While he would not likely have all the zeal of a prosecutor, it can certainly not be said that he would have none of that zeal. Fair trials are too important a part of our free society to let

prosecuting judges be trial judges of the charges they prefer.

Id. at 137. See also Republican Party of Minn. v. White, 536 U.S. 765, 776 (2002) (describing Murchison's holding that the "judge violated due process by sitting in the criminal trial of defendant whom he had indicted").

19. Here, should Chief Justice Castille participate, the due process violation will be even more clear than it was in Murchison. While the Murchison judge returned the indictment while acting as a *judge* and, thus, did "not likely have all the zeal of a prosecutor," id. at 137, then-District Attorney Castille *was the prosecutor who personally authorized his Office to seek the death penalty* in Terrance Williams' case. Due process will thus be violated if Chief Justice Castille now assumes the role of judge. And the due process requirement for Chief Justice Castille's recusal is even more applicable because the issues in this case, as the Court of Common Pleas has found, involve the violation of Mr. Williams' due process rights (by suppressing exculpatory information and presenting misleading information to the jury) by the District Attorney's Office that Chief Justice Castille headed at that time. If ever there was a case that "offer[s] a possible temptation to the average man as a judge ... not to hold the balance nice, clear and true between the State and the accused," Caperton, 556 U.S. at 878, this is it.

20. The above-described reports of Chief Justice Castille's judicial election campaign further highlight why it would violate due process for Chief Justice Castille to sit in judgment here. The Caperton decision made clear that judicial elections can create circumstances under which due process requires judicial recusal. Former United States Supreme Court Justice John Paul Stevens has stated: "A campaign promise to 'be tough on crime,' or to 'enforce the death penalty,' is evidence of bias that should disqualify a candidate from sitting in criminal cases." John Paul Stevens, Opening Assembly Address, A.B.A. Ann. Meeting, 12 ST. JOHN'S J. LEGAL COMMENT. 21, 30-31 (1996). See also Keith Swisher, Pro-Prosecution Judges: "Tough on Crime," Soft on Strategy,

Ripe for Disqualification, 52 Ariz. L. Rev. 317, 319 (2002) (under due process analysis required by Caperton, "tough-on-crime elective judges should recuse themselves from all criminal cases"). But such a sweeping rule is not necessary here. Chief Justice Castille's campaign was not just "tough-on-crime" or pro-death penalty, it was based in part on his record as District Attorney of putting people on death row, *one of whom is Mr. Williams*. Under these circumstances, at least, due process counsels Chief Justice Castille's recusal.

21. Chief Justice Castille's antagonistic attitude toward undersigned counsel's office, as evidenced by statements in his opinions denying prior recusal motions, also supports this motion for recusal on due process grounds. See, e.g., Caperton, 556 U.S. at 881 (due process requires recusal when judge "becomes 'embroiled in a running, bitter controversy'" with litigant (quoting Mayberry v. Pennsylvania, 400 U.S. 455, 465 (1971))); Commonwealth v. Dougherty, 18 A.3d 1095, 1096 (Pa. 2011) (Baer, J., concurring) (explaining that when judge "chastised an assistant district attorney who requested her recusal ..., this Court determined that such remarks increased the appearance of impropriety, and, indeed, necessitated the reversal of the judge's refusal to recuse" (citing Commonwealth v. White, 910 A.2d 648 (Pa. 2006)); id. at 1097 ("to attack counsel personally for requesting recusal, when the law requires such motions to be put forth before the judge whose actions are in question in the first instance, is obviously inappropriate"); Offutt v. United States, 348 U.S. 11, 17 n.3 (1954) (recusal required where judge criticized counsel as giving a "disgraceful and disreputable performance on the part of a lawyer who is unworthy of being a member of the profession; and I, as a member of the legal profession, blush that we should have such a specimen in our midst"); Fairley v. Andrews, 423 F.Supp.2d 800, 821 (N.D. Ill. 2006) (recusal required where judge made comments that could have been interpreted as prejudgment of the case against defendants, "especially in the wider context of the Court's negative interactions with Defendants' counsel"); United States v. Meyerson, 677 F.Supp. 1309, 1315 (S.D.N.Y. 1988) (judge recused self

because judge "resent[ed] unsupported assertions" and "tactics" of counsel); Marshall v. Georgia Pac. Corp., 484 F.Supp. 629, 631 (E.D. Ark. 1980) (recusal where reasonable observer "could assume that the court would view [statements by counsel] with considerable displeasure").

22. For all of the above-stated reasons, the Due Process Clause and the heightened due process requirements of the Eighth Amendment make Chief Justice Castille's recusal appropriate in this case.

II. PENNSYLVANIA LAW REQUIRES CHIEF JUSTICE CASTILLE'S RECUSAL

23. Pennsylvania's Code of Judicial Conduct requires recusal when a judge's "impartiality might reasonably be questioned." Id., Canon 3(C)(1). See also Joseph v. Scranton Times, 987 A.2d 633, 634 (Pa. 2009) (per curiam) ("appearance of impropriety" requiring recusal where "there are factors or circumstances that may reasonably question the jurist's impartiality in the matter"; "There is no need to find actual prejudice, but rather, the appearance of prejudice is sufficient to warrant the grant of new proceedings. A trial judge should not only avoid impropriety but must also avoid the appearance of impropriety."). For the reasons already stated, Chief Justice Castille's "impartiality might reasonably be questioned" in this case; thus, recusal is required under Pennsylvania law.

24. Moreover, Pennsylvania's Code of Judicial Conduct specifically identifies the following as an example of when a judge's "impartiality might reasonably be questioned" and, thus, when his or her recusal is required – when the judge "served as a lawyer in the matter in controversy." Id., Canon 3(C)(1)(b). In Commonwealth ex rel. Allen v. Rundle, 189 A.2d 261, 262 (Pa. 1963), the Court held that a judge who was the district attorney at the time the defendant was indicted must recuse himself from defendant's post-conviction proceedings. The same is true for Chief Justice Castille here, since he was the District Attorney throughout the trial and direct appeal proceedings, and personally authorized seeking death. See also United States v. Amerine, 411 F.2d

1130, 1134 (6th Cir. 1969) (applying similar language from 28 U.S.C. § 455 (1964); recusal of judge who was United States Attorney for the district in which defendant was tried at the time when complaints were issued against defendant "is not a matter for the exercise of [the judge's] discretion but is unconditional and absolute"); United States v. Vasilick, 160 F.2d 631, 632 (3d Cir. 1947) (same for judge who was United States Attorney when indictment was returned against defendant).

25. In Jones, Chief Justice Castille stated that he was exempted from Canon 3(C)(1)(b) by the Commentary thereto: "A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection." Jones, 663 A.2d at 146 (quoting Commentary to Canon 3(C)(1)(b)). But Chief Justice Castille's role as the Commonwealth's lawyer in this case did not arise through mere "association with other lawyers" in the District Attorney's Office. Instead, as the District Attorney himself, he was charged by law with representing the Commonwealth's interests in Mr. Williams' case. While one might argue that one *assistant* district attorney "does not necessarily have an association with other" *assistant* district attorneys in the same Office, it cannot reasonably be asserted that *the* District Attorney does not "have an association" with the lawyers under his command. The District Attorney is not merely a "lawyer in a governmental agency" – he is the *head* of that agency and the actions of that agency are his responsibility *as a matter of law*. See 16 Pa.C.S. § 1420 ("the district attorney may appoint such number of assistants, learned in the law, *to assist him* in the discharge of his duties"); Commonwealth ex rel. Specter v. Bauer, 261 A.2d 573, 575 (Pa. 1970) ("district attorneys in this Commonwealth have the power – and the duty – to represent the Commonwealth's interests in the enforcement of its criminal laws"); id. at 576 (district attorney is the "sole public official charged with the legal responsibility of conducting in court all criminal and other prosecutions, in the name of the Commonwealth" (internal quotation marks omitted)); Commonwealth v. Malloy, 450 A.2d 689, 691-92 (Pa.Super. 1982) ("the district attorney is charged with the responsibility for

the investigation and prosecution of any complaint which he approves"; "the district attorney's function is to represent the Commonwealth in criminal prosecutions. In the capacity as the Commonwealth's attorney, the district attorney has traditionally fulfilled the obligation of investigation and prosecution of crime by initially evaluating complaints to determine whether a charge should be brought against a suspect. 'A District Attorney has a general and widely recognized power to conduct criminal litigation and prosecutions on behalf of the Commonwealth, and to decide whether and when to prosecute, and whether and when to continue or discontinue a case.'").

III. THIS CASE IS DIFFERENT FROM PRIOR CASES IN WHICH CHIEF JUSTICE CASTILLE DENIED RECUSAL MOTIONS

26. In prior cases where Chief Justice Castille denied recusal motions grounded in part upon his former position as Philadelphia's District Attorney, Chief Justice Castille relied upon the movant's inability to provide evidence that Chief Justice Castille was "personally involved" in the movant's prosecution. See, e.g., Rainey, 912 A.2d at 757 ("To the best of my knowledge and recollection, I was not personally involved in any pre-trial investigation of appellant [or] the charging decisions that were made in his case .... [Counsel] has pointed to nothing in the record that demonstrates otherwise."); Porter, 35 A.3d at 33 (rejecting counsel's "repetitious complaint that my former position as the elected District Attorney of Philadelphia County requires my recusal, even though I had no actual involvement in appellant Porter's trial or direct appeal"); Beasley, 937 A.2d at 381 ("[T]o the best of my knowledge and recollection, I was not personally involved .... [Counsel] has pointed to nothing in the record that demonstrates otherwise.").

27. In this case, there is specific evidence of Chief Justice Castille's direct, personal involvement in this case – then-District Attorney Castille's *handwritten notation personally authorized his Office to seek death.* Thus, if personal involvement is required, it is established here.

28. In any event, the question of "personal involvement" is not dispositive under the

objective standards that govern recusal matters. Even absent proof of "personal involvement," recusal would be required here, as a matter of Fourteenth Amendment Due Process and Eighth Amendment law, and under Pennsylvania law, for all of the reasons stated herein.

IV. IF CHIEF JUSTICE CASTILLE DECLINES TO RECUSE HIMSELF, THIS MATTER SHOULD BE REFERRED TO THE FULL COURT

29. In denying prior recusal motions in capital PCRA cases, Chief Justice Castille stated that, "[u]nder the existing practice of this Court, recusal has been a matter of individual discretion or conscience and only the jurist being asked to recuse himself or herself may properly respond to such a request," Jones, 663 A.2d at 143 (citing Commonwealth v. O'Shea, 567 A.2d 1023, 1034 (Pa. 1989); In re Crawford's Estate, 160 A. 585, 587 (Pa. 1932)), and denied requests that the recusal motion be referred to the full court, Porter, 35 A.3d at 34.

30. Respondent Williams respectfully submits that this practice is inappropriate in light of the *objective* standards for recusal mandated by the Due Process Clause, e.g., Caperton, 556 U.S. at 872 ("there are *objective standards* that require recusal when 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable'" (quoting Withrow, 421 U.S. at 47), and Pennsylvania's Code of Judicial Conduct, e.g., Canon 3(C)(1) (recusal required when "impartiality might *reasonably* be questioned").

31. To be sure, it is appropriate for a recusal motion to *first* be considered by the Justice to whom it is directed, since only that Justice can know if there are *subjective* factors that require his or her recusal. But that subjective inquiry is "just one step in the judicial process" of considering a recusal motion – if a Justice makes the subjective determination that he or she is not biased, the recusal inquiry must proceed to the *objective* inquiry that is appropriate under Due Process, the Eighth Amendment and Pennsylvania law. Caperton, 556 U.S. at 886 ("Justice Benjamin did undertake an extensive search for actual bias. But, as we have indicated, that is just one step in the judicial process; objective standards may also require recusal whether or not actual bias exists or can

be proved."). As the United States Supreme Court recently reiterated:

> The judge's own inquiry into actual bias ... is not one that the law can easily superintend or review, though actual bias, if disclosed, no doubt would be grounds for appropriate relief. In lieu of exclusive reliance on that personal inquiry, or on appellate review of the judge's determination respecting actual bias, the Due Process Clause has been implemented by objective standards that do not require proof of actual bias.

Caperton, 556 U.S. at 883.

32. As to the *objective* recusal inquiry, the Justice whose recusal is sought is no better able to decide, and arguably is less able, than the rest of the Court. Indeed, due process *requires* that the full Court decide the due process-based recusal issue, just as the full Court would decide any other Constitutional issue presented by a litigant.

33. Accordingly, should Chief Justice Castille decide that he is not inclined to recuse himself, the matter should be referred to the full Court for decision under the objective standards mandated by Due Process, the Eighth Amendment and Pennsylvania law.

34. At the very least, the Court should order full briefing and argument on this issue, which courts have recognized to be one of great importance. See State v. Allen, 778 N.W.2d 863, 871-73, 880-83 (Wis. 2010) (plurality opinion) (calling for briefing and argument, in light of Caperton, on question of whether due process requires full Court review of single Justice's recusal decision); U.S. Fidelity Ins. v. Catastrophic Claims, 773 N.W.2d 243, 246-47 & n.12 (Mich. 2009) (opinion of Corrigan, J.) (same, noting that "former Michigan State Supreme Court Chief Justice Clifford Taylor [has stated] that Caperton 'has to mean that the challenged justice can't make the recusal decision alone'"); id. at 250 (calling for briefing and argument on question: "Does this Court's historical recusal practice – which permits each justice to decide motions for his or her recusal ... – comport with the Caperton Court's requirement for objective standards?"); Fieger v. Gromek, 373 Fed. Appx. 567, 572 (6th Cir. 2010) (holding that due process challenge to Michigan Supreme Court's practice of single justice consideration of recusal motions was mooted by that

Court's adoption of the following "new disqualification rule": "In the Supreme Court, if a justice's participation in a case is challenged by a written motion ..., the challenged justice shall decide the issue and publish his or her reasons about whether to participate. If the challenged justice denies the motion for disqualification, a party may move for the motion to be decided by the entire Court. The entire Court shall then decide the motion for disqualification de novo. The Court's decision shall include the reasons for its grant or denial of the motion for disqualification. The Court shall issue a written order containing a statement of reasons for its grant or denial of the motion for disqualification. Any concurring or dissenting statements shall be in writing.").

CONCLUSION AND PRAYER FOR RELIEF

For the reasons stated, Respondent respectfully prays:

1. that Chief Justice Castille recuse himself;

2. that, should Chief Justice Castille decline to recuse himself, this motion be referred to the full Court for decision; and that the full Court direct Chief Justice Castille's recusal.

Respectfully submitted,

LEIGH M. SKIPPER
Chief Federal Defender

BY:

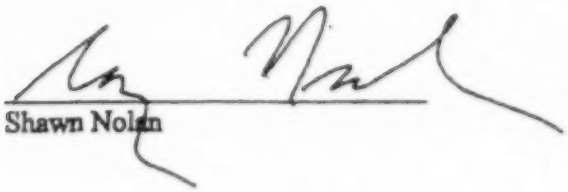
Shawn Nolan
PA Bar No. 56535
Billy H. Nolas
PA Bar No. 83177
Assistant Defenders
Federal Community Defender Office
for the Eastern District of Pennsylvania
Suite 545 West – The Curtis Center
Philadelphia, PA 19106
(215) 928-0520
Counsel for Terrance Williams

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a copy of the foregoing to be served upon the following person at the location and in the manner indicated below, which services satisfies the requirements of Pa.R.App.P. 121:

VIA HAND DELIVERY

Hugh Burns, Esq.
Office of the District Attorney
3 Penn Square South
Philadelphia, PA 19107



Shawn Nolan

Dated: October 1, 2012
Philadelphia, PA

exhibit A

MEMORANDUM

CITY OF PHILADE

DATE 1/21/86

TO : MARK GOTTLIEB, Chief, Homicide Unit

FROM : ANDREA G. FOULKES, Assistant District Attorney, Homicide Unit

SUBJECT: COMMONWEALTH V. TERRANCE WILLIAMS, CP #84-08-2362-2367

In the event the jury in the above-referenced case currently on trial, returns a verdict of Murder I, I request that we actively seek the death penalty.

In the instant case, the defendant, along with a co-defendant Marc Draper who is testifying for the Commonwealth in exchange for a plea to Murder II, Robbery & Conspiracy, abducted Amos Norwood, 56 years, chemist and resident of Mt. Airy, to the Ivy Hill Cemetary on the pretext of obtaining a ride home. There they forced him into the cemetary, tied him with his clothes, robbed him of money, credit cards, keys, etc. and Williams went back to the car to obtain a tire iron and a socket wrench. Upon his return to the bound and denuded victim he and Marc Draper proceeded to beat Amos Norwood about the head numerous times until he was dead. After taking Marc Draper to work in Norwood's car, defendant returned with gasoline and burned the body, hidden between the gravestones to avoid its identification. Defendant obtained over $200 and purchased gold necklaces with Norwood's credit card. Thus, the first aggravating circumstance is that the case is a felony-murder which rises to Murder in the First Degree.

The defendant has been previously convicted of two serious felonies involving violence to another person:

1. In December, 1982, defendant and one Lucius Larke burglarized the residence of Don and Hilda Dorfman, both in their late 60's, in Mt. Airy, put a .22 caliber rifle to Mrs. Dorfman's head and demanded money as the terrified couple remained in bed. They ransacked the house, taking thousands of dollars worth of property. Defendant was convicted by Judge Michael Wallace and sentenced to 12½ to 25 years in prison.

2. In January, 1984, defendant was invited into the residence of Herbert Hamilton, age 50, in West Philadelphia. The victim was homosexual and Williams proceeded to get into bed with the victim concealing a knife. As Williams

[redacted]

tried to stab Hamilton a fight ensued and Williams knocked out Hamilton with a baseball bat and then stabbed him numerous times in the back and left the knife lodged in his neck. Kerosene and numerous spent matches were found around the body but no fire was actually started. Defendant took some property from the deceased's apartment after the killing. Defendant was found guilty by a jury of Murder III and PIC and Theft and sentenced by Judge Sabo to 13½ to 27 years consecutive to any other sentence.

The defendant is currently awaiting trial on the robbery of Mr. Robert Hill, a friend of Herbert Hamilton. Marc Draper is his co-defendant in that case as well.

In mitigation, defendant is 19 years old and went through one year of college at Cheney University. At Germantown High School, he was reputed to be a promising quarterback and his team won the City championship. He has been described by persons who know him as a Jeckyl-Hyde personality.

Please advise.

/ktm Rec.
I recommend ceding Death
cc: file M. Gottlieb 1/22/86

Mark,
Approved to proceed on the Death Penalty.
Ronald D. Castille

exhibit B

IN THE
SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

NO. 98 E.D. APPEAL DOCKET 1987

COMMONWEALTH OF PENNSYLVANIA,
Appellee

v.

TERRANCE WILLIAMS,
Appellant

BRIEF FOR APPELLEE

Appeal from the Judgment of Sentence of the Court of Common Pleas, Trial Division, Criminal Section, of Philadelphia County, as of Information Nos. 2362-2367, August Term, 1984.

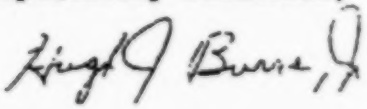
HUGH J. BURNS, JR.
Assistant District Attorney
RONALD EISENBERG
Chief, Appeals Unit
GAELE McLAUGHLIN BARTHOLD
Deputy District Attorney
WILLIAM G. CHADWICK, JR.
First Assistant District Attorney
RONALD D. CASTILLE
District Attorney

1421 Arch Street
Philadelphia, PA 19102

CONCLUSION

For the foregoing reasons, the Commonwealth respectfully requests this Court to affirm the judgments of sentence.

Respectfully submitted,



HUGH J. BURNS, JR.
Assistant District Attorney
RONALD EISENBERG
Chief, Appeals Unit
GAELE McLAUGHLIN BARTHOLD
Deputy District Attorney
WILLIAM G. CHADWICK, JR.
First Assistant District Attorney
RONALD D. CASTILLE
District Attorney

exhibit C

DISTRICT ATTORNEY'S OFFICE
1421 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19102

RONALD D. CASTILLE
DISTRICT ATTORNEY

June 23, 1988

Pa. Board of Probation and Parole
P.O. Box 1661
3010 N. Front Street
Harrisburg, Pennsylvania 17120

Re: Inmate Marc Draper

To Whom It May Concern:

At the request of the family of the above-named inmate, I am submitting the following information to them with instructions to forward it to you if and when this prisoner becomes eligible for parole or commutation of sentence

Marc Draper was the co-defendant of Terrance Williams and with Williams, conspired and acted to abduct, rob and beat to death 56 year old Amos Norwood, inside the Ivy Hill cemetery in the Mt. Airy section of Philadelphia. After tying the victim with his own clothes and beating him with car tools, the co-defendants took his money, credit cards and car, obtained more money and jewelry with the stolen goods in Atlantic City and Philadelphia. Their spree was ended when credit card calls were traced by police to a third man who assisted the killers in obtaining these credit card benefits.

Mr. Draper was arrested in his home and Williams fled the jurisdiction upon issuance of warrants. On the day of his arrest, Mr. Draper completely and thoroughly confessed his participation in this hideous crime without any promises or benefits offered to him. In addition, he voluntarily gave additional information about his co-defendant's responsibility for the murder of 33 year old Herbert Hamilton in West Philadelphia six months earlier, which led to the arrest of Williams on that previously unsolved case. Draper offered to cooperate fully with the investigations and to testify truthfully in the prosecution of Williams in both homicide cases, resulting in Williams' conviction in the earlier killing of murder in the third degree (William's defense was that the killing was provoked by homosexual advances of the victim) and a verdict of murder in the first degree with the penalty of

Re: Inmate Marc Draper

death by the jury in the Norwood case. In addition, Draper agreed to plead guilty to murder in the second degree, knowing that it brought a mandatory life sentence, without any promise of leniency or early release.

Although the heinous nature of the underlying crime cannot be minimized in any way, Mr. Draper has attempted to compensate significantly for his role in this matter. While it is true that he has benefitted by avoiding the death penalty for himself, I was well aware that during the pendency of prosecutions against Williams, Mr. Draper was visited regularly in Holmesburg prison by Williams himself, at the gates of Draper's protective custody area, and by friends of Williams inside Draper's cell block. Thus, Mr. Draper's security in prison was never certain, yet he continued without complaint in his cooperation with authorities to see that justice was served in all matters in which he had information or connection.

I never had any reason to doubt Mr. Draper's veracity and he never declined to answer the most difficult questions about his own culpability. Williams sent Mr. Draper letters in prison with alternative stories to feed the authorities and the court about their criminal activities. Mr. Draper passed that correspondence on to his father, a Philadelphia police officer, with instructions to give them to the prosecutor in preparation for trial. Those letters, in addition to his oral testimony, established a compelling case against Williams, who had a frightening history for violent crimes.

Therefore, it is proper for you to consider the cooperation of this inmate when determining his eligibility for parole or commutation at some future date. That I provide you with the particulars of Mr. Draper's cooperation was the only benefit or promise conveyed to him in exchange for his complete truthful cooperation. I hope this information will be useful in your evaluations.

Yours very truly,

Andrea G. Foulkes

ANDREA G. FOULKES
Assistant District Attorney
Homicide Unit

/mp
bcc: Mr. George Draper